IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 22 OF 1997

Shri Tukaram L. Ghadi,
resident of Kasarpal,
Latambarcem, Kasarpal,
Bicholim-Goa(since deceased),
through his legal heirs:-

(1a) Hirabai Tukaram GFhadi;

(1b) Prakash Tukaram Ghadi;

(1c) Pratibha Prakash Ghadi;

(1d) Somnath Tukaram Ghadi;

(1e) Bharati Tukaram Ghadi;

(1f) Gulabai Chandrakant Gaonkar;

(1g) Chandrakant Ganesh Gaonkar,

all residents of Kasarpal,
Latambarcem, Kasarpal,
Bicholim-Goa. ... Appellants

versus

Gomantak Daivadnya Brahman
Sanajtkarshak Saunstha,
Kasarpal, represented by its
President.

(1) Shri Shrikant P. Shirodkar,
resident of House No.165,
Old Goa, Ilhas-Goa.

(2) Shri Narayan R. Kanekar,
resident of Jose Falcao
Road, Panaji-Goa.

(3) Shri Jaithan Tangsal,
resident of Assonora-Goa. ... Respondents

Mr. M. S. Sonak, Advocate for the Appellants.

Mr. S. D. Lotlikar, Senior Advocate with Ms. K. Sambari, Advocate for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 2ND SEPTEMBER,2005.

ORAL JUDGMENT

This is defendant's second appeal arising from R.C.S. No.63 of 1985 and rests essentially on a substantial question of law which reads as follows:-

> "In view of the provisions of Section 58(2) of the Goa, Daman & Diu Agricultural Tenancy Act, 1964, could the learned Civil Court and the learned Appellate Court have adjudicated and decided on the issue, as to whether the predecessor-in-title of

the Appellants was a sub-tenant
of the suit property or not?"

2. The parties hereto are referred to in the names as they appear in the cause title of the said Civil Suit. Admittedly, the plaintiffs are the owners of the suit properties which have been surveyed under Nos.5/1 and 11 situated at village Latambarcem of Bicholim Taluka. The plaintiffs alleging that the defendant Tukaram Laxman Ghadi had falsely alleged in the year 1974 and again in the year 1981 that the suit properties were given to him on lease by one Ramnath Satelkar had filed D.C. Cases Nos.134 of 1974 and 194 of 1981 which were dismissed and although the defendant had no right to the suit properties the defendant had brought in cattle in the suit property on 25-8-1985 and on 26-8-1985 had excavated stones from survey no. 5/1 and, therefore, the plaintiffs filed a suit for permanent injunction, against the defendant, amongst other reliefs. The case of the defendant was that from the year 1965 the defendant was in actual possession of the suit properties as a sub-tenant of the plaintiffs through Shri Ramnath Satelkar and on payment of rent of Rs.100/- per year to the said Ramnath Satelkar. Amongst the issues framed was issue no.5 which reads as follows:-

"Whether the defendant proves that he has been in possession of the suit properties since 1965 as sub tenant of the plaintiff(through) Shri Ramnath Satelkkar?"

3. The learned trial Court by its Judgment/Order dated 24-11-1992 answered the said issue in the negative and decreed the suit of the plaintiffs and restrained the defendant from interfering with the suit properties. The defendant filed an appeal to the District Court and the learned Additional District Judge by his Judgment/Order dated 29-3-1996 dismissed the appeal with costs, interalia, observing that there was no duty cast on the learned Civil Judge to refer the said issue of sub-tenancy to the Mamlatdar.

4. At the hearing, Mr. M. S. Sonak, the learned Counsel of the appellants/defendants has placed reliance on Section 58 (2) of the Goa, Daman & Diu Agricultural Tenancy Act(Act, for short) as well as Section 7 and has submitted that the issue of sub-tenancy claimed by the defendants ought to have been referred to the Mamlatdar for his decision in the light of the said Sections of the Act. Mr. Sonak has also submitted that the said issue of sub-tenancy

claimed by the defendants ought to have been seen by the learned trial Court in the light of Section 4 of the Act and in fact when looked in the light of Section 4 of the Act, the learned trial Court was duty bound to have referred the said issue to the Mamlatdar. Reliance has been placed by the learned Counsel on the decision of this Court in the case of **Pandu Dhondi Yerudkar and another** v. **Ananda Krishna Patil** (AIR 1975 Bombay 52) wherein this Court has observed that whenever an issue as regards tenancy is framed the Court has no other option but to refer such issue for decision to the authorities under the Act. In that case, an issue as regards tenancy was raised and the Court, therefore, held that it was not permissible for the Court to direct the defendants to produce prima facie evidence in support thereof, because determination of such an issue is taken away from the jurisdiction of the Court and has to be decided by the authorities under the Act.

5. Section 58 of the Act creates a bar to jurisdiction of Civil Courts and Sub-Section 2 thereof provides that save as provided in this Act, no Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal, Collector or Government, and no order passed

by these authorities under this Act shall be questioned in any Civil or Criminal Court.

6. Section 7 of the Act deals with question of tenancy and provides that if any question arises whether any person is or was a tenant or should be deemed to be a tenant under this Act the Mamlatdar shall, after holding an inquiry, decide such question.

7. It is also necessary to have a look at the definition of the word "tenant" as given under Section 2(23) of the Act which defines a tenant to mean a person who on or after the date of commencement of this Act holds land on lease and cultivates it personally and includes a person who is or was deemed to be a tenant under the Act. Section 4 of the Act deals with persons who are deemed to be tenants and the first part of Section 4 of the Act states that a person lawfully cultivating any land belonging to another person(hereinafter in this Section referred to as the owner) on or after the 1st of July, 1962 bur before the commencement of this Act, shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not--

(i) a member of the owner's family, or

(ii) a servant on wages payable in cash or kind but not in crop share or a

hired labourer cultivating the land under the personal supervision of the owner or of any member of the owner's family, or

(iii) a mortgagee in possession:

Provided that if upon an application made by the landlord within one year from the commencement of this Act to the Mamlatdar within whose jurisdiction the land is situated:--

(a) the Mamlatdar declares that such person is not a tenant and his decision is not reversed on appeal or revision, or

(b) the Mamlatdar refuses to make such declaration but his decision is reversed on appeal or revision,

such person shall not be deemed to be a tenant under this section.

8. The first proviso states that a sub-tenant cultivating any land belonging to another person on or after 1st July, 1962 but before the commencement of the Act, shall, notwithstanding the fact that the creation

of the sub-tenancy might have been prohibited by any law for the time being in force, be deemed to be lawfully cultivating the land as a tenant for the purposes of this Section; and in such cases, the intermediary tenant or tenants prior to the creation of the sub-tenancy shall not be deemed to be the tenant or tenants for the purposes of the Act.

9. A Civil Court has jurisdiction to decide all matters of civil nature unless the jurisdiction is taken away expressly or by necessary implication by any other law. A combined reading of Section 58(2) of the Act with Section 7 of the Act shows that only issues of tenancy and deemed tenancy are required to be decided by the Mamlatdar and the jurisdiction of other Court to decide these issues has been taken away. A plea of sub-tenancy is not included in Section 7 of the Act and, therefore, it cannot be said that a plea of sub-tenancy is also required to be exclusively decided by the Mamlatdar. In fact Section 15 of the Act prohibits Sub-division or sub-letting of the land held by a tenant and Section 11 of the Act gives a right to the landlord to terminate a tenancy on the ground that the tenant has sub-divided or sub-let or assigned any interest in the land, otherwise than as permitted under Sections 14 and 15 of the Act. Section 11 of the Act is which gives a right to the landlord to terminate a tenancy on the ground of sub-letting is of no assistance to the case of the defendant. Since sub-tenancy itself is

prohibited by the Act, except to the extent it is acknowledged by Section 4 of the Act, it was not necessary for the learned Civil Judge to have referred the plea of sub-tenancy taken by the defendant for a decision of the Mamlatdar. As far as the submssion that the said plea of sub-tenancy ought to have been construed by the learned Civil Judge as a plea of a deemed tenancy and ought to have been referred to the Mamlatdar, in my view, cannot also be accepted. The defendant had taken the plea that the sub-tenancy was created in the year 1965 though the said Satelkar had stated that it was created in the year 1966. The defendants would be right in contending that what had to be taken into consideration was the plea that the sub-tenancy was created in the year 1965 and not the fact stated by DW3/Ramnath Satelkar that sub-tenancy was created in the year 1966. It is to be noted that the Act recognised a deemed tenancy only in respect of those persons cultivating the land from 1-7-1962 and before the commencement of the Act i.e. to say 8-2-1965. The defendants did not take a specific plea that he was a deemed tenant, he having been a sub-tenant cultivating the land on or after 1-7-1962 and until 8-2-1965. The defendants remained satisfied by taking a vague plea that he was a sub-tenant of the plaintiff through the said Satelkar from the year 1965. It was necessary for the defendants to take a specific plea that he was a deemed tenant in terms

of Section 4 of the Act and only in that event it would have been incumbent on the Civil Court to have referred such a plea to the Mamlatdar for his decision. The defendants having chosen not to take a specific plea in terms of Section 4 of the Act there was no duty cast on the learned trial Court to have referred the plea of the defendant for the decision of the Mamlatdar. As a result, the essential substantial question referred to hereinabove has got to be answered in the affirmative in that the learned Civil Court could have answered the plea taken by the defendant and it was not necessary for the said plea to have been referred to the Mamlatdar.

10. There are also two other questions, namely, (b) and (c) which were framed as substantial questions of law by Order of this Court dated 19-2-1998. The question (b) as framed does not arise since the decisions given by Mamlatdar of Record of Rights have been taken only as pieces of evidence along with other evidence to hold the said issue no.4 as disproved and against the defendant. As far as question (d) is concerned the same also would not arise as there was no duty cast on the Civil Court to refer the plea of sub-tenancy claimed by the defendants to the Mamlatdar, for his decision.

11. In view of the above, this Second Appeal fails and is hereby dismissed with costs.

N. A. BRITTO, J.

RD.